IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 10TH OCTOBER 2007 / 18TH ASWINA 1929

Crl.MC.No. 3093 of 2007()

CP.53/2007 of JUDL.MAGISTRATE OF FIRST CLASS COURT, OTTAPPALAM

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PETITIONER: ACCUSED

CHAMY, S/O. KOTHA, AGED 23,
MEETTANAPPADY VEETTIL, WARD NO.16,
OTTAPPALAM MUNICIPALITY, OTTAPPALAM TALUK,
PALAKKAD DISTRICT.

BY ADV. SRI.G.SREEKUMAR (CHELUR)
SRI.K.RAVI (PARIYARATH)

RESPONDENTS: (STATE & COMPLAINANT)

STATE OF KERALA, REP. BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR ADV.SRI.JAI GEORGE

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 10/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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Crl.M.C. No. 3093 Of 2007

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Dated this the 10th day of October, 2007

ORDER

The petitioner faces indictment in a prosecution under the provisions of the Kerala Abkari Act. Investigation is complete. Final report has been filed. Cognizance has been taken. Committal proceedings has been registered. The petitioner has not been arrested or enlarged on bail so far. In response to a summons issued to him under Section 204 Cr.P.C, on the first date of positing he entered appearance through counsel and applied to excuse his absence. That has been allowed. The matter has been posted on 25.10.07.

2. The petitioner is willing to surrender before the learned Magistrate and seek regular bail. But the petitioner apprehends that his application for regular bail may not be considered by the learned Magistrate in accordance with law and expeditiously. He may be remanded to custody for the reason that the petitioner has not been arrested and enlarged on bail so far, submits counsel. I must assume that the learned Magistrate, when he issued only summons, and not warrant of arrest, must have applied his mind to facts and chosen to issue the summons to the petitioner. So the petitioner can certainly appear before the learned Magistrate. Having issued only the summons the learned Magistrate cannot obviously

abdicate the jurisdiction to consider on merits the claim for bail under Section 437 Cr.P.C. His prayer for regular bail must be considered by the learned Magistrate in the light of the dictum in **Sukumari v. State of Kerala** (2001 (1) KLT 22). It must be also considered on the date of surrender itself in the light of **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

3. I am satisfied that it is not necessary to issue any further or specific directions. This Crl.M.C is hence dismissed with the above observations.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE